

Anno Regni Regini GEORGIJ, Secundi, Quinto & Sexto.

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Support of His Majesty's Government. 491



Acts and Laws

Passed by the Great and General Court or Assembly of His Majesty's Province of the Massachusetts-Bay in New-England, begun & held at Boston, upon Wednesday the Thirty-first Day of May, 1733, and continued by several Adjournments unto Wednesday the Fourth Day of April following. (S. 1733.)

CHAP. X.

An Act for Granting the Sum of Three Thousand Pounds for the Support of His Majesty's Governour.

BE IT ENACTED by His Excellency the Gouvernor, Council and Representatives in General Court assembled, and by the Authority of the same, That the Sum of Three Thousand Pounds in Bills of publick Credit on this Province, be and hereby is granted unto His most Excellent Majesty, to be paid out of the Publick Treasury to His Excellency Jonathan Belcher, Esq; Captain General and Governour in Chief in and over this His Majesty's Province of the Massachusetts-Bay, to enable him to go on in managing the publick Affairs.

CHAP. XI.

An Act in explanation of & addition to an Act ^{of George II ch. 12.} entitled, An Act to prevent unnecessary Law-Suits.

WHEREAS by an Act made and pass'd in the Fourth Year of His present Majesty's Reign, entitled, An Act to prevent unnecessary Law-Suits; It is provided, "That where any Person is sued in a Plea of Debt due by Book, he may plead what is due upon his Book by way of Ballance to the Plaintiff's Book; Upon which many Doubts have arisen and may arise:

Wherefore, for the Explanation thereof;

Be it Enacted and Declared by His Excellency the Gouvernor, Council and Representatives in General Court assembled, and by the Authority of the same, That the true Intent and Meaning thereof is, That if any Person be sued in any Action, either

P. P. P.

Accompt of Debt or of the Case, for any Sum of Money due upon Contract between the Parties for any Goods Sold, or Service done, whether the Accompt be open, or a Ballance thereof be made and signed by the Parties (except Specialties & express Contracts in Writing) He may either plead Specially, or upon the general Issue, give in Evidence what is due upon his Book by way of Ballance to the Plaintiff's Demand, and be admitted to all such Method and Course of proving his Accompt as any Plaintiff upon his Suit might.

open or bal-
anced ad-
mitted as
Evidence:
Defendants
Book admit-
ted as Evi-
dence against
the Plaintiffs
Demand.

And inasmuch as it hath sometimes happened, that when two Persons have at the same Time Execution against each other, one of them absconds and leaves a Power of Attorney with some other Person, to receive the Money due on his Execution, and by his absconding as aforesaid, avoids paying the other Execution:

Preamble. *For Prevention whereof, and such like Inconveniences*
for the future;
Be it Enacted by the authority aforesaid, That when and so often as it shall happen that the Sheriff, his Deputy, or any Coroners, or his Deputy, or Constable, shall at the same Time have several Executions, wherein the Creditor in one Execution is Debtor in the other, that in such Case such Officer or Officers are hereby impowered and directed to cause one Execution to answer and satisfy the other, so far as the same will extend.

Proviso. *Provided always,* That this Act shall not be construed to extend to any Judgments and Executions, wherein the Creditor in one Execution, is not in the same Capacity and Trust Debtor in the other.

23 W. ch. 16. **CHAP. XII.**
An Act in addition to an Act entitled, An Act for Review in Civil Causes.

Preamble. **W**HEREAS in and by An Act of this Province, Entitled An Act for Review in Civil Causes, made and pass'd in the Thirteenth Year of the Reign of His late Majesty King WILLIAM the Third, It is Enacted, " That it shall be in the Liberty of the Party aggrieved, at the Judgment given in any Inferior Court of Common Pleas, or in the Superior Court of Judicature respectively, " by new Process to Review the laid Cause, once in each Court;" And it is also thereby further Enacted, " That Execution shall not be stay'd or suspended for, or by Reason of any Process of Review"; Which Law by experience hath been found to be in general good and wholesome; but by Reason of the last mentioned Clause of the Act, it hath frequently happened in Cases where the Plaintiff in the original Action hath obtained Judgment against the Defendant, upon the Appeal at the Superior Court of Judicature, whereupon Execution hath immediately issued, and the original Defendant, either by Means of the said Plaintiff's living out of the Province, or of his Insolvency, or of his being as Executor or Administrator, hath been defeated of duly serving his Writ of Review, or finally lost or been put to great Difficulty to recover back the Money levied by

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AN ACT RELATING TO Lotteries.

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by Execution, altho' he prosecutes his Writ of Review at the next Superior Court of Judicature, and Judgment there rendered for reversing the former Judgment, with Costs ; which is such an hardship upon the original Defendant that he loses the good Effects intended by the said Law :

For Remedy whereof for the future ;

Be it Enacted by His Excellency the Governor, Council and Representatives in General Court Assembled, and by the Authority of the same, That where the original Plaintiff in any personal Action now depending, or hereafter to be commenced upon the Tryal of the Appeal at the Superior Court, shall obtain Judgment against the original Defendant, for any Sum or Sums of Money or other things Sued for and Costs ; in all such Cases such Defendant entring into Bonds at the Time of making up the said Judgment, with sufficient Security to be approved of by the said Court, with Condition to prosecute a Writ of Review of the said Action with Effect, at the next Superior Court of Judicature to be holden within and for the same County, and to Answer and Pay to the original Plaintiff for the Debt recovered after the Rate of Twelve Pounds per Cent. per annum, being double Interest, from the Time of making up said Judgment, for his being delayed, and double additional Costs, in case the Judgment be affirmed, Execution shall be stay'd until Judgment upon the Review; and in case the original Plaintiff shall not be an Inhabitant or Resident in this Province at the Time of prosecuting the Writ of Review, it shall be deemed a good and legal Service for the Plaintiff on the Review to serve the Attorney, Factor, Agent or Trustee of the original Plaintiff, or such Person as appeared for the original Plaintiff, on the Appeal with his Writ of Review, which shall be deemed as effectual to hold him, to answer and defend in the said Action, as if he himself were served with said Process. Provided, that the double Interest aforementioned shall not extend to the letting of Cattle or Usages of the like Nature in Practice among Farmers, or maritime Contracts among Merchants, as Bottomry or Course of Exchange, as hath been heretofore accustomed.

And be it further Enacted by the Authority aforesaid, That in all real Actions where the Defendant or Defendants in the Review happen to live out of the Province, so that he or they can't be duly served with a Writ of Review, the Service of such Writ upon the Ter-Tenant or Person in Possession of the Premises, shall be deemed a good Service, to hold the Defendant or Defendants to answer and defend in said Suit ; and the Court of Judicature where the said Writ is returnable, shall proceed to try the Action as if Process had been served upon the original Defendant or Defendants Personally.

Execution on
Judgments
on the Ap-
peal to be
stay'd in Case;
157. 10. 17.
a quo gatis
venerab.

Writs of Re-
view may be
served on At-
torney, &c.,
in case.

April 10.
A. D. 1704.
Provisos

Writ of Re-
view in real
Actions may
be served on
Ter-Tenants
in Case.

CHAP. XIII.

An ACT in addition to an ACT entitled, An Act s. G. ch. 2.
for the suppressing of Lotteries.

WHEREAS the Provision made in and by an ACT Intituled, An ACT for the Suppressing of Lotteries, made and pass'd in Sixth Year of the Reign of his late Majesty King GEORGE the First

Preamble.

First, has not been found sufficient to put a Stop to that Practice, but sundry Persons have exposed their Estates as well Real as Personal to Sale by Lotteries, Projected, and the Tickets disposed of, within this Province, reserving the Drawing of the Lots in some of the neighbouring Colonies or Provinces, whereby the good and wholesome Design and true Intent and Meaning of the aforesaid Law, is very much eluded and evaded, to the great discouragement of Trade and Industry, and grievous Hurt and Damage of many unwary People:

For Remedy whereof, Be it Enacted by His Excellency the Governor, Council and Representatives in General Court Assembled, and by the Authority of the same, That from and after the Publication of this Act, if any Person or Persons shall undertake or set up any Lottery, or expose to Sale, or dispose of any Estate, Real or Personal, by way of Lottery, such Person or Persons shall for such Offence forfeit and pay the Sum of Five Hundred Pounds, to be recovered by Information, Plaintiff, Bill or Action at Law, in any of His Majesty's Courts of Record within this Province; the one half thereof to be to King's Majesty, to be applied towards the Support of this Government, the other half to him or them that shall Inform and Sue for the same.

And be it further Enacted by the Authority aforesaid, That if any Person or Persons shall be aiding or assisting in any Lottery, by Printing, Writing or any otherways Publishing an Account thereof, or where Tickets may be had for the same, such Person or Persons shall forfeit the Sum of One Hundred Pounds to be recovered and disposed of in manner as aforesaid.

And be it further Enacted by the Authority aforesaid, That if any Person or Persons shall offer or expose to Sale, give, sell or otherways dispose of to any Person within this Province, any Lottery-Tickets for the Sale of any Estate whatsoever, Real or Personal, such Person or Persons shall forfeit the Sum of Two Hundred Pounds for each Ticket so exposed to Sale or otherwise disposed of, to be recovered in manner as aforesaid, and for the Use aforesaid; and the Person so offending shall be incapable of sustaining any Office or Place of Profit whatsoever, within this Province.

Provided always, That this Act shall not be construed to extend to any Lottery allowed by Act of Parliament, or Law of this Province.

CHAP. XIV.

An ACT for securing the seasonable Payment of Town & Precinct Rates or Assessments.

Preamble.

22. 1. 1700.

as it may be.

WHEREAS the Method directed to by Law and heretofore practiced by the Receivers or Treasurers of Towns and Precincts hath been to Sue for and Recover Town and Precinct Rates and Assessments, or the Arrears thereof, by mean Process against the Constables or Collectors, to whom they were committed to be gathered, who neglected their Duty therein, whereby the Payment of such Rates or Assessments into the respective Town and Precinct Treasuries, hath been greatly delayed to the grievous Damage of many Places:

To

Anno Regni Regis G E O R G I I, Secundi, Sexto.

Town & Precinct Rates. Commissioners.

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To prevent which for the future, Be it Enacted by His Excellency the Gouvernour, Council and Representatibes in General Court Assembled, and by the Authority of the same, That from and after the Publication of this Act, if the Constable or Collector of any Town or Precinct within this Province (to whom any Town, or Precinct Rates or Assessments have been committed to collect,) shall be remiss in his Duty by Law required, and neglect to collect such Rates and Assessments as have been committed to him to collect, and to pay in the same to the Treasurer or Receiver of such Town or Precinct, by the Time fixed in the Warrant to him directed, or within one Month next after the Expiration thereof, such Treasurer or Receiver is hereby empowered by Warrant under his Hand and Seal, directed to the Sheriff of the County, or his Deputy (who are hereby respectively directed and empowered to execute the same,) to cause such Sum or Sums of Money, as such Constable or Collector hath not paid in, to be levied by Distress and Sale of his Estate, Real or Personal, returning the Overplus (if any there be) and for want of such Estate to take the Body of such Constable or Collector, and to imprison him until he pay the same.

Provided, This Act shall continue and be in Force for the Space of Three Years from and after the Publication thereof, and from thence to the End of the Session of the General Assembly then next after, and no longer.

C H A P. XV.

An ACT authorizing Commissioners to determine the Line or Boundary between that part of the Province of the Massachusetts-Bay, late the Colony of Plymouth, and the Colony of Rhode-Island.

WHEREAS of late Years there has been a Claim made by the Government of Rhode-Island, of the Jurisdiction of a Tract of Land and the Inhabitants thereof, lying to the Eastward of Pawtucket River, although of a long Time the same hath been under this Province, and the ancient Colony of Plymouth, now a part of the Province aforesaid, and from their first Settlement have paid Taxes there; and the General Court of Rhode-Island, having chosen Col. Willet of West-Chester, Col. Isaac Hickes and Mr. James Jackson of Flushing, all of the Colony of New-York, on their part, and having proposed that this Court should join the like Number of disinterested Persons, to hear & determine this Controversy.

Therefore,

Be it Enacted by His Excellency the Gouvernour, Council and Representatibes in General Court Assembled, and by the Authority of the same, That Roger Wolcott of Windsor, Oxias Pitkin of Hartford, Esqrs; and Mr. Joseph Fowler of Lebanon,

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banon, all of the Colony of Connecticut, be and hereby are desired and fully authorized and impowered to meet with the said Col. Willet, Col. Hickes and Mr. Jackson, or some other Person or Persons appointed by the General Assembly of Rhode-Island, not exceeding three, sometime in the third Week of July next ensuing, as soon in the Week as the Commissioners incline or conveniently may, at Hartford or New-London, in the Colony of Connecticut, which the General Assembly of the Colony of Rhode-Island, at their next Sessions shall chuse; then and there to agree, settle, order and determine the aforesaid Boundary, and under whose Jurisdiction or Government the said Tract of Land is, and ought to be and remain hereafter; and the Agreement and Determination under the Hands and Seals of the said Commissioners, or the major part of them, delivered to a Committee of this Court, to be appointed to represent and act for this Government before said Commissioners, shall be binding and conclusive on this Province forever.

Committee
to attend the
Commissioners.

Commissioners to ap-
point an Umpire in Case
they can't agree.

And be it further Enacted by the Authority aforesaid, That if it should so happen, that the said Commissioners or the major part of them, shall not agree, then they the said Commissioners or the major part of them, shall & may chuse another disinterested Person of some of the neighbouring Governments, to be the Umpire or Seventh Man, to join with them, and decide the said Controversy, as fully as if the Person was Named in this Act.

And that the Meeting of Commissioners, to adjust the Controversy aforesaid, may be as certain and unfailing as possible;

Be it Enacted by the Authority aforesaid, That in Case any one or more of the Commissioners named on the part of this Government, shall not be present, the Committee (or such of them as shall be present,) appointed to Represent and Act for this Province, may and shall Name and Chuse some other disinterested Person or Persons in his or their Room and Stead, who shall have the same, and as full Power and Authority to join and determine the aforesaid Difference, as those Named in this Act would have had, if present.

Proviso.

Provided always, That the said Commissioners or the major part of them give up and deliver their Award or Determination under their Hands and Seals, to the Committee, as aforesaid, at or before the last Wednesday of August next ensuing.

And for the more amicable and quiet proceeding to issue the aforesaid Controversy, It is further Condescended and Agreed,

Process for
Rates to be
suspended.

And be it therefore Enacted by the Authority aforesaid, That all Processes for Rates or Taxes levied by the Laws or Authority of this Province, shall cease and be suspended, until the Delivery of the Commissioners award to the Committee as aforesaid, if on or before the aforesaid last Wednesday of August.

Provided further, That the General Assembly of the Colony of Rhode-Island, come into an Act, like to this in Substance,

G. H. A. P.

CHAP. XVI.

An Act for allowing necessary Supplies to the Eastern and Western Indians, and for regulating Trade with them.

WHEREAS the Indians in the Eastern and Western Parts of this Province, have (many Years since) Recognized their Subjection and Obedience to the Crown of Great-Britain, and have their Dependance on this Government, for Supplies of Cloathing and other Necessaries;

To the Intent therefore that they may be furnished with the same at such easy Rates and Prices as may oblige them to a firm Adherence to His Majesty's Interest; several Truck-Houses having been erected and set up for that Purpose;

Be it Enacted by his Excellency the Governour, Council and Representatives in General Court assembled, and by the Authority of the same, That Provisions, Cloathing and other Supplies suitable for a Trade with the said Indians, be procured with Clothing, Provisions, &c. to be prepared for the Trade with the Indians.

the several Sums that have been, now are, or shall be hereafter granted for that Purpose, by the General Court, and the Produce thereof applied from Time to Time for supplying the said Indians as aforesaid, by such Person or Persons as shall annually be chosen by this Court, who shall proceed according to the Instructions they shall receive from this Court, or from the Governour and Council on any Emergency in the Recess of this Court; Provided such Instructions and Directions be consistent with the Instructions they receive from the General Court: Which Person or Persons so chosen shall annually lay before this Court fair Acco:nts of his or their Proceedings herein; And all Supplies of Cloathing, Provisions and other Things shall be lodged at such Places to the Eastward and elsewhere, as the General Court have heretofore ordered, or as they shall from time to time order and appoint.

Acco:nts of the Trade to be annually laid before the General Court.

And be it further Enacted by the Authority aforesaid, That a suitable Person be appointed by this Court for each of the Places, where any of the Goods aforesaid are lodged, as a Truck-Master, to have the Care and Management of the Trade with the Indians, to be paid for his Service such Sum or Sums from Year to Year as this Court shall Order; Which Truck-Masters shall be under Oath, and shall give sufficient Security for the faithful Discharge of that Trust, and attending such Instructions as shall be from time to time given them by this Court, and in the Recess of the Court, by the Governour and Council, as aforesaid. And the said Truck-Masters shall keep fair Acco:nts of their Trade and Dealing with the said Indians, and shall return the same, together with the Produce thereof, from time to time, to the Person or Persons who shall be appointed to supply them with the Goods as aforesaid: The said Acco:nts to be laid before the Court.

Truck-Master to be chosen.

And

Truck Masters not to Trade on their own Account.

Goods to be Sold according to Invoice.

Private Persons not to sell strong Drink to the Indians.

Penalty.

Limitation.

And they shall not Trade with the said Indians on behalf or account of themselves, or any other Person or Persons. And in case of the Death of any such Truck-Master or Mismanagement in that Trust, during the Recess of the Court, another shall be put in his Place by the Governour with the Advice of the Council, until the next Session of the General Court.

And be it further Enacted, That the said Truck-Masters shall sell the Goods to the Indians at the Price set in the Invoices sent them from time to time without any Advance thereon, and shall allow the Indians for their Furs and other Goods, as the Market shall be at Boston, according to the latest Advices that they shall receive from the Person or Persons that shall supply them for the same Commodities of equal Goodness: And that the Truck-Masters do supply the Indians with Rhum in moderate Quantities, as they shall in prudence judge convenient and necessary, at the Rate as charged in the Invoice from time to time.

And be it further Enacted by the authority aforesaid, That from and after the Publication of this Act, no Person or Persons whatsoever, other than the Truck Masters that shall be appointed in Manner as is before provided, shall or may presume by themselves, or any other for them, directly or indirectly to sell, give, truck, barter or exchange to any of the aforesaid Indians, any strong Beer, Ale, Cyder, Perry, Wine, Rhum, Brandy, or any other strong Liquor, by what Name or Names soever called or known, on Penalty of Forfeiting the Sum of *Fifty Pounds* or Six Months Imprisonment, for each Offence: And in case any Rhum or strong Liquors shall be sold or traded with on Board any Ship or Vessel, or transported into those Parts for Sale; all such Rhum or strong Liquors shall be also Forfeited; and the Offences aforesaid shall be tried at any of His Majesty's Courts of Record within this Province; and the Justices of the said Courts are accordingly empowered to Hear and Determine thereon: One Moiety of all Fines and Forfeitures arising by virtue of this Act, to be laid out in procuring Supplies for carrying on the Trade with the Indians, the other Moiety to him or them that shall inform or sue for the same, in any of the Courts aforesaid.

This Act to continue and be in force till the End of the Session of the General Assembly in *May*, One thousand seven hundred and thirty seven.

The seven foregoing Acts were published, April 28. 1733.

